Tan Hoe Kock & Anor v Ali Akarbara bin Mangudin & Ors

HIGH COURT (KUALA LUMPUR) — SUIT NO D5-22-585-1995
KAMALANATHAN RATNAM JC
17 JULY 1996

Civil Procedure *— Pleadings — Further and better particulars — Application for — Whether particulars should be given before or after discovery is made — Whether fiduciary relationship between parties relevant — Whether court has discretion in granting such application — Rules of the High Court 1980 O 18 r 12(1) & (3)*

The fourth to eleventh defendants ('the defendants') filed their defence on 10 January 1996. Before delivering their defence, the defendants by a letter dated 27 December 1995 applied for further and better particulars of some of the matters alleged in the statement of claim. On 22 January 1996, the plaintiffs filed an answer to the request for further and better particulars. Being dissatisfied with one of the answers provided, the defendants took out a summons-in-chambers pursuant to O 18 r 12(3) of the Rules of the High Court 1980 ('the RHC') for the plaintiffs to supply the particulars in respect of the breach of trust and instances of misappropriation as alleged, details as to the monies and other assets that were allegedly misapropriated. The issue was whether such particulars were to be supplied before or after discovery.

Held, allowing the defendants' application:

(1) There was no general rule that particulars would be refused until after discovery when there was a fiduciary relationship between the parties. Each case had to be considered on its own facts and merits and the special circumstances surrounding it (see p 318H–I); *Ross v Blakes Motors Ltd* [1951] 2 All ER 689 and *Waynes Merthyr Co v Radford & Co* [1896] 1 Ch 29 followed; *Millar v Harper* (1888) 38 Ch D 110 distinguished.

(2) The plaintiffs had not filed any affidavit in reply to state their grounds for any belief that such acts of misappropriation or breaches of trust were perpetrated. Neither had they given any instance of such acts which led them to allege as they did. No specific charges had been made against the defendants in the statement of claim either. Hence, this was a case where after carefully looking at all the facts, particulars should precede discovery (see pp 318I–319I); *Arab Monetary Fund v Hashim & Ors (No 2)* [1990] 1 All ER 673 followed.

(3) It was expedient and highly desirable that the particulars were requested for and supplied at this stage instead of the summons for directions stage as both parties would then be able to reassess their pleadings and have sufficient time to make any necessary amendments (see p 320E). However there may be instances when a defendant requested for particulars purely to harass the

plaintiff or as a fishing expedition. Particulars ought not be given in every case as of right. It was a discretionary right vested with the court to be exercised upon a study of the pleadings and the averments in the affidavit in support of the application for particulars (see p 320G).

[Bahasa Malaysia summary

Defendan keempat hingga defendan kesebelas ('defendan-defendan') telah memfailkan pembelaan pada 10 Januari 1996. Sebelum menyampaikan pembelaan mereka, defendan-defendan melalui sepucuk surat bertarikh 27 Disember 1995 telah memohon untuk butir-butir lanjut dan yang lebih baik mengenai beberapa perkara yang didakwa dalam pernyataan tuntutan. Pada 22 Januari 1996, plaintif-plaintif telah memfailkan jawapan kepada permohonan untuk butir-butir lanjut dan yang lebih baik. Akibat ketidakpuasan terhadap satu jawapan yang telah diberikan, defendan-defendan telah mengambil satu saman-dalam-kamar mengikut A 18 k 12(3) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT 1980') supaya plaintif-plaintif membekalkan butir-butir berkenaan dengan pecah amanah dan penyelewengan seperti yang didakwa, butir-butir mengenai wang dan harta lain yang didakwa telah dilesapkan. Isunya adalah sama ada butir-butir tersebut perlu dibekalkan oleh plaintif sebelum atau selepas penzahiran.

Diputuskan, membenarkan permohonan defendan tersebut:

(1) Tidak terdapat kaedah am bahawa butir-butir tidak akan dibenarkan sehingga selepas penzahiran apabila terhadap hubungan fidusiari di antara pihak-pihak terbabit. Setiap kes mesti dipertimbangkan atas fakta tersendiri dan merit dan keadaan khas yang meliputinya (lihat ms 318H–I); *Ross v Blakes Motors Ltd* [1951] 2 All ER 689 dan *Waynes Merthyr Co v Radford & Co* [1896] 1 Ch 29 diikut; *Millar v Harper* (1888) 38 Ch D 110 dibeza.

(2) Plaintif-plaintif telah tidak memfailkan sebarang afidavit jawapan untuk menyatakan asas untuk kepercayaan mereka bahawa penyelewengan atau pecah amanah telah dilakukan. Mereka juga tidak memberikan sebarang perincian tindakan tersebut yang mengakibatkan mereka mendakwa seperti yang dibuat. Tidak terdapat tuduhan spesifik yang dibuat terhadap defendan-defendan di dalam pernyataan tuntutan. Oleh yang demikian, ini adalah kes di mana setelah meneliti semua fakta kes ini, butir-butir mesti mendahuluhi penzahiran (lihat ms 318I–319I); *Arab Monetary Fund v Hashim & Ors (No 2)* [1990] 1 All ER 673 diikut.

(3) Ianya adalah berpatutan dan amat diingini bahawa butir-butir diminta dan diberikan pada tahap ini dan bukan pada tahap saman minta arahan agar kedua-dua pihak boleh menilai pliding mereka dan mempunyai masa yang mencukupi untuk membuat pindaan yang diperlukan (lihat ms 320E). Walau bagaimanapun

A mungkin terdapat keadaan di mana defendan meminta butir-butir hanya untuk menganggu plaintif atau sebagai satu ekspedisi memancing. Butir-butir tidak patut diberikan dalam setiap kes sebagai hak. Ia adalah satu hak budi bicara dalam penguasaan mahkamah dan hanya patut digunakan setelah meneliti pliding and pernyataan dalam afidavit menyokong permohonan untuk B butir-butir (lihat ms 320G).]

Notes

For cases on further and better particulars, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2590–2591. C

Cases referred to

Arab Monetary Fund v Hashim & Ors (No 2) [1990] 1 All ER 673 (folld)
Leal v Dunlop Bio-Processes International Ltd [1984] 1 WLR 874 (refd)
Lim Kee Tak v Lim Kee Tian [1987] 2 MLJ 528 (refd) D
Millar v Harper (1888) 38 Ch D 110 (distd)
Ross v Blakes Motors Ltd [1951] 2 All ER 689 (folld)
Waynes Merthyr Co v Radford & Co [1896] 1 Ch 29 (folld)

Legislation referred to

E Rules of the High Court 1980 O 18 r 12(1), (3), O 25 r 7(1), Form 35, Form 47

Porres Royan (*Shook Lin & Bok*) for the plaintiff.
M Manoharan (*V Somaskanthan* with him) (*Karpal Singh & Co*) for the F first to third defendants.
HK Ling (*Cheang & Ariff*) for the fourth to eleventh defendants.

Cur Adv Vult

G **Kamalanathan Ratnam JC:** The plaintiffs, husband and wife, had a controlling interest in two companies, namely PN Consolidated Sdn Bhd and Metroknit Sdn Bhd ('the group'). The first defendant was at all material times the first plaintiff's personal assistant and was also the security manager of the group. The second defendant is the wife of the first defendant and together were the only shareholders of the third defendant. H The fourth and fifth defendants were at all material times the only directors of another company called Weatherwell Corp Sdn Bhd ('Weatherwell'). The sixth and seventh defendants were directors of and the agents or servants of the eight defendant. The ninth defendant, being designers and traders in fashion garments, was controlled by the sixth and seventh defendants who were its substantial shareholders. The tenth and eleventh defendants are I companies incorporated in Malaysia. The first to third defendants were represented by one counsel whilst the fourth to eleventh defendants were collectively represented by another.

The fourth to the eleventh defendants filed their defence on 10 January 1996, but before delivering defence, by a letter dated 27 December 1995, they applied for further and better particulars of some of the matters alleged in the statement of claim. On 22 January 1996, the plaintiffs filed an answer to the request for further and better particulars of the statement of claim. Therefore, the issue of whether particulars would be ordered before the defendants deliver their defence does not arise here. Being dissatisfied with one of the answers provided, the fourth to eleventh defendants took out a summons in chambers (encl 15) pursuant to O 18 r 12(3) of the Rules of the High Court 1980 ('the RHC 1980'). The particulars sought were as follows:

(1) Bahawa plaintif-plaintif, dalam masa tujuh hari dari tarikh perintah ini, menyampaikan butir-butir berkenaan dengan penyalahgunaan, pecah amanah ke atas wang dan/atau lain-lain aset beberapa buah syarikat dalam kumpulan itu seperti yang dinyatakan dalam perenggan 13.25 pernyataan tuntutan dalam ini kepada defendan keempat hingga kesebelas dengan menyatakan butir-butir penyalahgunaan dan/atau pecah amanah seperti yang diperkatakan, tarikh dan tempat di mana penggelapan dan/atau pecah amanah seperti yang diperkatakan itu dilakukan, menyatakan butir-butir wang dan lain-lain aset yang dipersoalkan dan menyatakan butir-butir beberapa buah syarikat yang dipersoalkan;

(2) Bahawa jikalau plaintif-plaintif gagal menepati perintah untuk perenggan 1 di atas, dengan gagal menyampaikan butir-butir selanjutnya dan lebih baik seperti yang diperintahkan, perenggan 13.25 pernyataan tuntutan dibatalkan; dan

(3) Bahawa kos untuk permohonan ini dikoskan dalam kausa.

Paragraph 13.25 of the statement of claim referred to in encl 15 above states as follows:

> ... from the time the first defendant and his co-conspirators had wrested control of the group from the plaintiffs, they and in particular the first and/or the fourth and/or the fifth defendants have misappropriated and/or committed breach of trust of monies and other assets of various companies in the group in particular of Weatherwell, Shirtmakers and Country Road.

The application for further and better particulars as embodied in the fourth to eleventh defendants' letter was as follows:

> ... particulars of the misappropriation, alleged breach of trust and assets of various companies in the group, stating the details of misappropriation, the date on which and the place at which the alleged breach of trust has been committed, stating the details of the other assets in question.

The plaintiffs' solicitor's reply with which the fourth to eleventh defendants were dissatisfied is as follows:

> The particulars sought are within the knowledge of the defendants and the plaintiffs will seek discovery of the same at the appropriate time.

In support of his request for the said particulars, Mr Ling for the fourth to eleventh defendants referred me to *Lim Kee Tak v Lim Kee Tian* [1987] 2 MLJ 528. In that case the plaintiff was claiming as *administrator de bonis*

A *non* of one Chew Hwee (with aliases) who at the time of her death owned some lands. The defendant was a donee of a power of attorney and had after revocation by the death of the donor, transferred the said lands to two persons and the transfers were done fraudulently, as alleged by the plaintiff. In the defence, the defendant claimed that the deceased, Chew Hwee (with aliases) held the same lands in trust for the defendant who was the B beneficial owner. The defendant did not state whether the trust was by deed or oral; he merely used the word 'trust'. The plaintiff then applied for further and better particulars which the learned senior assistant registrar ('the SAR') refused and hence the appeal before the learned judge. Mustapha Hussein J held as follows:

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> The principles underlying applications for further and better particulars are to be found under 'Functions of Particulars' in any *White Book*. In any pleading a certain amount of details are obviously necessary not only to ensure clearness but also to prevent surprise to the other party and to narrow down the real issues or points in dispute.
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> D ... In our case, the simple word 'trust' is not that clear. It could mean oral, by deed or even constructive. Reviewing all the authorities, this court is of the view that the defendant should give further and better particulars, not only of the creation of the trust but also the properties included in the said trust. Moreover there is nothing wrong in disclosing the particulars as it would save time and expense. It will, in no way at all, prejudice the defendant. On the other hand, it will provide clarity to the issues involved.

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His Lordship thus allowed the appeal with costs.

Mr Ting then referred me O 18 r 12(1)(a) of the RHC 1980 which reads as follows:

> F 12 (1) Subject to paragraph (2), every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing words ...
>
> (a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies; and ...

G He thus submitted that in accordance with the said subrule and the case cited, particulars in respect of the breach of trust and instances of misappropriation as alleged, details as to the monies and other assets that were allegedly misappropriated and particulars relating to the various companies involved, ought to be particularized in order to provide clarity H to the issues in dispute and to enable the defendants to reply to these issues.

In reply, Mr Royan submitted that since his clients had no control over the group, they had no knowledge of what had exactly happened.

In *Odgers' Principles of Pleading and Practice* (23rd Ed), at p 192, the I learned authors stated as follows:

> It is no objection to an application for particulars, that the applicant must know the true facts of the case better than his opponent. He is entitled to know the outline of the case that his adversary will try to make against him,

> which may be something very different from the true facts of the case. His opponent may know more than he does; in any event it is well to bind him down to a definite story. Particulars will be ordered whenever the master is satisfied that without them the applicant cannot tell *what* is going to be proved against him at the trial. But how his opponent will prove it is a matter of evidence of which particulars will not be ordered.

Based on the above, and the clear words of O 18 r 12(1)(a) of the RHC 1980, it would appear to me that the plaintiffs would have to supply the particulars. The crux of the matter here however is whether such particulars are to be supplied *before* or *after* discovery. It would appear that the plaintiffs' solicitor's view is that the particulars ought to be ordered only after discovery whereas counsel for the defendants say that it is imperative that his clients be supplied with the details now.

Counsel for plaintiffs further submitted that the documents relating to the said companies were with the police and it was not denied by the defendants that the first defendant has indeed been charged by the police in connection with the affairs of the group.

Mr Royan referred me to *Millar v Harper* (1888) 38 Ch D 110 where the Court of Appeal held that where the defendant had means of knowing the facts in dispute and the plaintiff had not, the defendant was not entitled to particulars until after he had given discovery. The facts in *Millar*'s case had to be considered. The plaintiffs, who were the executors of a married woman, sued her husband to establish that a quantity of the furniture and other chattels comprised in an inventory which had been taken of the goods in the defendant's house, belonged to the separate estate of the wife. The husband applied for particulars of demand showing which chattels they claimed. The court held that the application ought to stand over till the husband had made an affidavit as to which of the articles belonged to the wife.

In reply Mr Ting re-emphasized the applicability of O 18 r 12(1)(a) and the need for specifics. He argued that if the plaintiffs had no knowledge, then they ought not to make such a plea. The facts in *Millar*'s case are unlike those in the present case. Allegations of breach of trust had been made and therefore there ought to have been a basis for such an allegation. That is what the defendants want. The basis for such an allegation.

In *Ross v Blakes Motors Ltd* [1951] 2 All ER 689, the plaintiff's statement of claim alleged that it was a term of the agreement that the defendants should deliver the car to customers in strict sequence and rotation in relation to the dates of orders for cars placed with them, and that, in breach of their agreement, the defendants had delivered cars to persons who had placed their orders after the plaintiff had placed his order. Before delivering their defence, the defendants asked for particulars of this allegation. The plaintiff gave particulars of one such instance and reserved the right to add to the particulars after discovery. The defendants applied to the master under RSC O 19 r 7, for an order for particulars of all the persons (other than the person of whom particulars had been given) to whom the plaintiff alleged cars had been delivered otherwise than in strict rotation, or, alternatively, for an order that the allegation in the

plaintiff's statement of claim should be struck out or be limited to the single case of which the plaintiff had given particulars.

In his judgment, Jenkins LJ set out the defendant's submission at pp 692 and 693, which is not totally unlike those in this instant case, viz:

> ... the plaintiff should be ordered at once to state his case with sufficient particularity, otherwise he will have gained an advantage by making his fishing allegation. If he can postpone the date when particulars are ordered against him until after he had had discovery, he may be able, if he is lucky, to construct some sort of cause he has not got now by means of a roving examination of the defendant's books. Counsel also says that, until they have particulars, the defendants do not know what case they have to meet and are so much in the dark about it that they will not be able to put in a proper defence. He does not say that the statement of claim is impossible to plead to, but he says it is a difficult matter to do justice to the defence with the statement of claim as it stands.

At pp 695–697, his Lordship held as follows:

> ... In my view, that allegation (that the cars had not been delivered in strict rotation) cannot fairly be classed as a purely fishing allegation. There is the relation of vendor and purchaser between the parties. The plaintiff cannot have any knowledge of the internal management of the defendant's affairs. ... The details of that allegation, if it be well-founded, are, of course, eminently matters within the knowledge of the defendants and the defendants alone.
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> ... it seems to me that this is not a case in which it would be proper to order particulars before defence, and I think it clearly is a case in which the learned judge, in the exercise of his discretion, might properly come to the conclusion that it was a case in which the particulars in question should not be ordered until after discovery. ...

The appeal was therefore dismissed. In the course of his judgment to which Birkett LJ agreed, the Court of Appeal did consider various cases to determine whether there is such a rule that where there is a fiduciary relationship, the plaintiff will not as a rule be ordered to give particulars of matters which are not within his knowledge, but are within the knowledge of the defendant, until he has had discovery. At p 695, it was held as follows:

> Taking those authorities together, in view of *Waynes Merthyr Co v Radford & Co* [1896] 1 Ch 29 and *Millar v Harper* (1888) 38 Ch D 110, it seems to me impossible to hold that the practice of refusing particulars until after discovery is limited to cases in which a fiduciary relationship exists between the parties. I think the law on this matter is as stated in the first paragraph of the headnote in the *Waynes Merthyr Co* case: 'the court will exercise its discretion upon all the circumstances in each case'. A very material circumstance for the court to consider, in exercising its discretion, is the one referred to by Bowen LJ in *Millar v Harper*:
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> > 'It is good practice and good sense that where the defendant knows the facts and the plaintiffs do not, the defendant should give discovery before the plaintiffs deliver particulars.'

In the *Waynes Merthyr* case, it was alleged in para 5 of the statement of claim that on 'diverse other occasions' the defendants had taken orders from a particular brewery company and 'diverse other persons' for coal from the plaintiffs' colliery, and fraudulently supplied coal not purchased from the plaintiff. The plaintiffs stated that they could not comply with the order for delivery of particulars before discovery. In para 6 of the statement of claim, the plaintiffs gave two instances of firms which have ceased to deal with them as a result of the fraudulent practice of the defendant. The defendants excused themselves by saying that they did not know of this fraud personally, and that it had been committed by one of their clerks, who had already been severely reprimanded. The facts also show that the parties have had friendly business relations for the last 30 years, and the annual quantities of coal purchased from the plaintiffs had decreased during the last years thereby supporting the plaintiffs' case. The defendants also admitted that they would avail themselves of the order to stay proceedings if the plaintiffs did not deliver proper particulars. Hence the plaintiffs' application for discovery before giving particulars on the ground that if they did not get discovery, they would not be able substantially to comply with the order already made, and proceedings would consequently be stayed, and there would be a miscarriage of justice.

At p 36 Chitty J held as follows:

> ... I began by saying that this was not a fishing case, but one having a substantial foundation, and it is necessary to go into these details in order to arrive at a just conclusion. The defendants by a careful examination of their books have the means of discovering whether any other frauds similar to those alleged have been committed; the discovery claimed by the plaintiffs is limited to four years from the date of the writ, and it seems to me that this is a case in which, having regard to the position of the parties and the admitted facts, and having regard to the circumstance that many of these alleged frauds are within the defendants' means of knowledge, and are not within the knowledge of the plaintiffs, I think discovery ought to precede particulars, and I think this order should be made for the purpose of effecting justice between the parties, because I see the use which the defendants may be able to make of the order for particulars as originally made in chambers, in which event the plaintiffs might fail to obtain justice.
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> The result therefore is that the order will be varied by directing discovery to precede particulars.

Having carefully perused the authorities on both the factual situations in those cases and the principles of law involved, I had directed the plaintiffs to give particulars before discovery. It is clear that each case had to be considered on its own facts and merits and the special circumstances surrounding it as in the *Waynes Merthyr* case. There is no general rule that particulars would be refused until after discovery where there is a fiduciary relationship between the parties as was rightly pointed out in *Ross' case*. In as much as it was not pleaded in this case that there was a fiduciary relationship, it was not a matter which I can consider in the plaintiff's favour.

The plaintiffs had not filed any affidavit in reply to state their grounds for any belief that such acts of misappropriation or breach of trust were

perpetrated. Neither had they given any instance of any such acts which led them to allege as they did. No specific charges had been made against the defendants in the statement of claim either. Hence, I hold that this is a case where after carefully looking at all the facts, particulars should precede discovery.

In *Arab Monetary Fund v Hashim & Ors (No 2)* [1990] 1 All ER 673, the issue arose as to whether the plaintiff was entitled to frame pleadings in general terms and defer particularization until after discovery. The plaintiff was an international banking organization and H, the first defendant, was its first director general. H is reported to have defrauded the fund of about US50m. Proceedings were commenced against H claiming damages for dishonest and fraudulent breach of trust, and against his wife, alleging in general terms that she was accountable as a constructive trustee for part of the US50m on the ground that with actual or constructive knowledge of H's breach of trust, she had assisted in that breach, received trust property and disposed of it, and giving as an instance of Mrs H's involvement, the payment of US1m into her Toronto bank account. The fund obtained, inter alia, a worldwide Mareva injunction against H and his wife preventing the dissipation of their assets. However, before the fund's solicitors were able to serve the Mareva order on Mrs H, she flew to Toronto, where she withdrew the balance in her bank account and gave it as gifts to her two sons, in the form of two banker's drafts, and transferred to her younger son the legal title to an apartment she had purchased the previous year. Hoffmann J in deciding whether the fund's claim ought to be struck out against Mrs H on the ground that it was not properly pleaded and was lacking in particulars, held at p 679 as follows:

> The mainstream of authority suggests that constructive notice of the breach of trust is insufficient and that there is no such thing as constructive knowledge. What must be shown is conduct showing want of probity by reason either of knowledge of the breach of trust or a deliberate avoidance of such knowledge.
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> On the other hand, there are cases which treat a weaker form of knowledge as sufficient and would impose accountability on a non-fiduciary who gave assistance or received trust money with knowledge of facts which would put a reasonable man on notice that there had been a breach of trust. This, I assume, is what was intended by the expression 'constructive knowledge' in the pleading. The state of the authorities is such that I do not think an allegation of liability based on this weaker form of knowledge can for the moment be treated as unarguable.
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> ... This is, in my view, a case in which the fund is entitled to plead in general terms and to defer particularization of its case until after discovery: see eg *Leitch v Abbott* (1886) 31 Ch D 374. Of course, by the time the case comes to trial Mrs Hashim will be entitled to full particulars of the detailed allegations on which the fund will rely. But the absence of such particulars is not, in my judgment, a ground for striking the claim out now.
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> In the mean while, I think that, there is material on which the fund's counsel was entitled to plead want of probity.

As alluded to earlier, there was no evidence of any want of probity on the part of the defendants to enable me to exercise my discretion in the plaintiffs' favour. The above case is illustrative of the facts which counsel for the plaintiff ought to put before the court before the general pleadings can be allowed to stand or to justify particularization after discovery. The principle decided in the above case which is that the plaintiff is entitled to plead in general terms and defer particularization of the allegations until after discovery, provided that there is in the meantime some evidence of conduct on which the plaintiff is entitled to plead want of probity, cannot be applied in the instant case.

Though the plaintiffs in the instant case have pleaded in para 13.26 that 'the plaintiffs will give further and better particulars of the various acts after discovery' as in the *Arab Monetary Fund* case, there is, I believe, a material difference, as the learned judge said at p 679:

> ... At the moment the pleading gives certain particulars but they are prefaced by the statement that they are the best that can be given until after discovery.

In the instant case, upon perusal of the pleadings, I hold, upon exercising my discretion, that there are insufficient particulars to enable the defendants to know the basic charges against each of them.

It is expedient and highly desirable that particulars are requested and supplied at this stage instead of the summons for directions stage as both parties would then be able to reassess their pleadings and have sufficient time to make any necessary amendments. I noted from the case file that the plaintiffs had on 18 April 1996 filed their particulars as ordered by me on 29 March 1996, consisting of three folios. This information will clearly enable the defendants to properly prepare for the trial and to effect justice among the parties. Should the plaintiffs need to make any amendments to their pleadings or to add on further particulars after discovery, they are at liberty to apply. I therefore held that the fourth to eleventh defendants are entitled to the particulars sought and ordered the same to be delivered within 21 days from the date of the order, failing which paras 13–25 of the statement of claim would be struck out. I ordered costs to be in the cause.

I am also not unmindful of instances when a defendant requests for particulars purely as a matter of harassment of the plaintiff or as a fishing expedition. Particulars ought not to be given in every case as of right. It is a discretionary right vested with the court to be exercised upon a study of the pleadings and the averments in the affidavit in support of the application for particulars.

It is meet and proper at this stage to state that a party seeking particulars should do so pursuant to O 18 r 12(1). He should of course make a request for the particulars sought by way of a letter first and if the said request is compiled with, there would then be no need for any application to be made to this court. The opposite party must then furnish the said particulars by way of Form 35 of the RHC 1980. However, if the opposite party refuses to respond to the request for further particulars made pursuant to a letter, then the party seeking particulars must file an

application pursuant to O 18 r 12(3) with a supporting affidavit giving reasons for seeking such particulars. I take the stand that a party seeking particulars, ought not to seek such particulars by way of O 25 r 7 unless by consent or that the particulars sought are so obvious as to be uncontestable. Order 25 r 7(1) reads:

> Any party to whom the summons for directions is addressed must so far as practicable apply at the hearing of the summons for any order or directions which he may desire as to any matter capable of being dealt with on an interlocutory application in the action and must, not less than seven days before the hearing of the summons, serve on the other parties a notice in Form 47 specifying those orders and directions in so far as they differ from the orders and directions asked for by the summons.

I draw to mind the words of Slade LJ in *Leal v Dunlop Bio-Processes International Ltd* [1984] 1 WLR 874 wherein the learned judge said at p 885:

> ... If he cannot properly enter through the front door of O 6 r 8, he should not be allowed to enter through the back door of O 2 r 1.

Application allowed.

Reported by Lew Chee Seong